

GJR/DA  
18-80563

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
MARIE WAGNER,

Plaintiff,

-against-

ARMAN SIDDIQUI, M.D., JOHN DOE #1, M.D.,  
JOHN DOE #2, JOHN DOE #3, JOHN DOE #4, JOHN  
DOE #5, JAY D. DRAOUA, M.D. and WESTCHESTER  
COUNTY,

Defendants.  
-----X

**ANSWER**

**JURY TRIAL DEMANDED**

Index No.: 07CV10383(RWS)

Defendant JAY D. DRAOUA, M.D., by his attorneys, MARTIN CLEARWATER & BELL LLP, answers the plaintiff's complaint as follows, upon information and belief:

1. Denies each and every allegation contained in the paragraph of the complaint designated "PRELIMINARY STATEMENT".

**PARTIES**

2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "1", "2", "3", "4", "5", "6", "7" and "9".

3. Denies each and every allegation contained in the paragraph of the complaint designated "8", except admits that defendant was, and still is, duly licensed to practice medicine in the State of New York.

**JURISDICTION AND VENUE**

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "10" and "11", except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

**RELEVANT STATUTORY CRITERIA**

5. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "12", "13", "14", "15" and "16", except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

**STATEMENTS OF FACTS**

6. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "17", "18", "19", "20", "21", "22", "23", "24", "25", "26", "32", "33", "34", "35", "36", "37", "38", "39", "41" and "46".

7. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "27", "28", "29", "30", "31", "40", "42", "43", "50", "52", "53", "54" and "55", except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

8. Denies each and every allegation contained in the paragraphs of the complaint designated "44", "45" and "51", except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

9. Denies each and every allegation contained in the paragraphs of the complaint designated "47" and "48", except admits that defendant rendered certain professional services in accordance with acceptable medical standards and due care, and begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

10. Denies each and every allegation contained in the paragraph of the complaint designated "49".

**LEGAL ALLEGATIONS**

**FIRST CAUSE OF ACTION**

11. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "56".

12. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraph of the complaint designated "57", except begs leave to refer all questions of fact to the trier of fact and all questions of law to the Court.

**SECOND CAUSE OF ACTION**

13. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "58".

14. Denies each and every allegation contained in the paragraph of the complaint designated "59".

**THIRD CAUSE OF ACTION**

15. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "60".

16. Denies each and every allegation contained in the paragraph of the complaint designated "61".

**PENDENT STATE CLAIMS**

**FOURTH CAUSE OF ACTION**

17. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "62".

18. Denies each and every allegation contained in the paragraph of the complaint designated "63".

**FIFTH CAUSE OF ACTION**

19. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "64".

20. Denies each and every allegation contained in the paragraph of the complaint designated "65".

**AS A FIRST AFFIRMATIVE DEFENSE**

21. Defendant JAY D. DRAOUA, M.D. denies liability, but if liability is found against this defendant and the liability is found to be 50% or less of the total liability assigned to all persons liable, then this defendant invokes the limits on liability for noneconomic loss set forth in CPLR §1601.

**AS A SECOND AFFIRMATIVE DEFENSE**

22. That defendant asserts the terms, provisions, limitations and rights contained in §4545 of the CPLR.

**AS A THIRD AFFIRMATIVE DEFENSE**

23. Whatever injuries plaintiff may have sustained at the time and place alleged in the complaint were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of the plaintiff.

**AS A FOURTH AFFIRMATIVE DEFENSE**

24. That the complaint fails to state a cause or causes of action upon which relief can be granted against defendant JAY D. DRAOUA, M.D.

**AS A FIFTH AFFIRMATIVE DEFENSE**

25. Plaintiff has failed to comply with the requirements of CPLR Section 3012-a.

**AS A SIXTH AFFIRMATIVE DEFENSE**

26. Defendant objects to all punitive language, as defendant was not negligent, careless nor reckless. Defendant reserves its right to strike any and all punitive language from the Complaint and all future pleadings.

**AS A SEVENTH AFFIRMATIVE DEFENSE**

27. Defendant JAY D. DRAOUA, M.D. is immune from suit under the doctrines of qualified and/or absolute immunity.

**AS A EIGHTH AFFIRMATIVE DEFENSE**

28. Defendant JAY D. DRAOUA, M.D. at all times acted in good faith and with justification.

**AS A NINTH AFFIRMATIVE DEFENSE**

29. Defendant JAY D. DRAOUA, M.D. was and is not a state actor.

**AS A TENTH AFFIRMATIVE DEFENSE**

30. The actions by defendant JAY D. DRAOUA, M.D. were privileged under Article 9 of the Mental Hygiene Law.

**AS A ELEVENTH AFFIRMATIVE DEFENSE**

31. The defendant JAY D. DRAOUA, M.D., acted in accordance with the Mental Hygiene Law at all times.

WHEREFORE, defendant JAY D. DRAOUA, M.D. demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York  
March 18, 2008

Yours, etc.

MARTIN CLEARWATER & BELL LLP

By: 

\_\_\_\_\_  
Gregory J. Radomisli (GJR 2670)  
Attorneys for Defendant  
JAY D. DRAOUA, M.D.  
220 East 42nd Street  
New York, NY 10017  
(212) 697-3122

TO:

WILLIAM M. BROOKS  
MENTAL DISABILITY LAW CLINIC  
Attorneys for Plaintiff

Touro College  
Jacob D. Fuchsberg Law Center  
225 Eastview Drive  
Central Islip, New York 11722

ARMAN SIDDIQUI, M.D.  
95 Grasslands Road  
Valhalla, New York 10595

WESTCHESTER COUNTY  
County Clerk  
111 Dr. Martin Luther King, Jr. Boulevard  
White Plains, New York 10601